

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

GTE USA, INC and GS-TECH AMERICA,)
LLC,)
Plaintiffs,) Case No. 2:23-cv-00022-RWS
v.)
ADM CO., LTD. and SFA ENGINEERING)
CORP.,)
Defendants.)

**DEFENDANTS ADM CO., LTD. AND SFA ENGINEERING CORP.
ANSWER AND DEFENSES TO COMPLAINT**

Defendants ADM Co., Ltd. (“ADM”) and SFA Engineering Corp. (“SFA”) (collectively, “Defendants”) by the undersigned counsel answer Plaintiffs’ Complaint as follows:

1. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1. Upon information and belief, GTE USA, Inc (“GTE USA”) is registered as a domestic profit corporation with the Secretary of State of Georgia.
2. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2. Upon information and belief, GS-

Tech America (“GS-Tech America”) is registered as a domestic limited liability company with the Secretary of State of Georgia.

3. Defendants deny all allegations in paragraph 3. Defendants are both incorporated pursuant to the laws of the Republic of Korea, each with a principal place of business in the Republic of Korea.

4. Defendants deny all allegations in paragraph 4.

5. Defendants deny all allegations in paragraph 5, except to admit on November 15, 2021, GTE USA and ADM entered into a Construction Agreement (the “Contract”). **Exhibit A** is a true and correct copy of the Contract. “ADM Inc.” as named in the Contract refers to ADM. Article 11(2) of the Contract states the competent court when “any dispute about this contract” arises is a “court which is located in the place of [ADM] or the place designated by [ADM].” *Id.* SFA nor GS-Tech America were parties to the Contract. All remaining allegations in paragraph 5, if any, are denied.

6. Defendant ADM admits it did not file a formal written claim regarding the work performed by GTE USA but denies the remainder of paragraph 6. Defendant SFA admits that it did not make a claim given it is not a party to the Contract. All remaining allegations in paragraph 6 are denied.

7. Defendants deny all allegations in paragraph 7.

8. Defendants deny all allegations in paragraph 8.
9. Defendants deny all allegations in paragraph 9, except admit in

October 18, 2022, Plaintiff GTE USA filed a Complaint against ADM in a civil court in the Republic of Korea (the “Korean Complaint”) alleging ADM breached the parties’ Contract by, among other things, purportedly failing to pay for labor costs allegedly due to GTE USA. **Exhibit B** is a true and correct copy of Plaintiff GTE USA’s Korean Complaint.¹ In the Korean Complaint, GTE USA states: “[t]he plaintiff [GTE USA] and the defendant [ADM] have **agreed that in the case of a dispute regarding the construction agreement in this case, the court in the place where the defendant is located has jurisdiction** (Article 11 (2) of Exhibit A No. 3).” *Id.* (emphasis supplied). The action instituted by GTE USA’s Korean Complaint against ADM is currently pending before a civil court in the Republic of Korea. The Complaint in the above-captioned action filed on January 6, 2023 seeks the same labor costs based on the same alleged breach of the Contract as is sought in the action pending in the Republic of Korea by GTE USA. All other allegations in paragraph 9 are denied.

¹ Exhibit B includes an English translation of the Korean Complaint followed by the original Korean Complaint as submitted to a civil court in the Republic of Korea.

10. The allegations in paragraph 10 constitute a statement of Plaintiffs' intention and therefore, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegation. To the extent required, all allegations in paragraph 10 are denied.

* * *

As to the paragraph following "WHEREFORE" in Plaintiffs' Complaint, Defendants deny all allegations in this paragraph and every subparagraph.

AFFIRMATIVE AND OTHER DEFENSES

Defendants assert the following defenses to the Complaint, but do not assume the burden of proof on any such defenses, except as required by applicable law with respect to the particular defense asserted. Defendants further assert that they will rely upon all proper defenses lawfully available that may be disclosed by the evidence and reserve the right to amend to state such defenses.

FIRST DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, by insufficient service of process on Defendants under Georgia law. The Summons improperly addressed to "ADM"² is listed as being served on "SFA Engineering." The signatory on the Sheriff's Entry of Service, Yi Jang Hun, is not an ADM employee. The signatory

² ADM Co., Ltd. was improperly named as "ADM."

on the SFA Engineering Sheriff's Entry of Service is Ashley Choi. Ms. Choi is not an employee of SFA Engineering.

SECOND DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, by insufficient process as required under Georgia law.

THIRD DEFENSE

Plaintiffs' Complaint fails on *forum non conveniens* grounds. The Contract at issue expressly states as to "any dispute about this contract" the "court which is located in the place of [ADM] or the place designated by [ADM] shall become a competent court." Ex. A, Article 11(2). In its Complaint filed in a court of law in the Republic of Korea, Plaintiff GTE USA relies on this clause to invoke the jurisdiction of the civil court in the Republic of Korea. SFA is not a party to the Contract.

FOURTH DEFENSE

Plaintiffs' Complaint fails on the basis of insufficient venue due to the forum selection clause in the Contract.

FIFTH DEFENSE

Plaintiffs' Complaint fails on the basis of lack of personal jurisdiction over Defendants, who are both incorporated pursuant to the laws of the Republic of

Korea, each with a principal place of business in the Republic of Korea. Neither Defendant was properly served.

SIXTH DEFENSE

The Complaint fails as to SFA because SFA is not a party to the Contract, which forms the basis of Plaintiffs' Complaint for breach of contract. SFA cannot have breached a contract to which it is not a party.

SEVENTH DEFENSE

GS-Tech America is an improper party to the litigation. The Complaint seeks damages due to an alleged breach of the Contract. GS-Tech America is not a party to the Contract.

EIGHTH DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, by estoppel.

NINTH DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, by accord and satisfaction as additional payment was received and accepted in satisfaction and discharge of said claims.

TENTH DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, due to failure of consideration.

ELEVENTH DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, by release.

TWELFTH DEFENSE

Plaintiffs' Complaint is barred by payment of all sums due under the Contract.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs fail to state a claim upon which relief may be granted.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by failure to perform all work due under the Contract.

FIFTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the right of set-off.
WHEREFORE, Defendants ADM Co., Ltd. and SFA Engineering Corp., respectfully request that this Honorable Court deny the relief requested in Plaintiffs' Complaint, dismiss the action in its entirety, grant Defendants its costs and expenses incurred herein, including reasonable attorneys' fees, and for such other and further relief as the Court deems just.

Dated: February 15, 2023

Respectfully submitted,

/s/ Michael McConnell

Michael McConnell

Georgia Bar No. 485003
Alaura R.M. Perdzock
(*pro hac vice filed*)
JONES DAY
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Atlanta, GA 30361
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Attorneys for Defendants

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font and point requirements of Local Rule 5.1 of the United States District Court for the Northern District of Georgia, using 14-point Times New Roman font, as approved by the Court.

Dated: February 15, 2023

/s/ Michael McConnell
Michael McConnell

An Attorney for Defendants



[제41호 서식]

Registered No. 2023 - 129

NOTARIAL CERTIFICATE

KYUNG HYANG LAW NOTARY OFFICE
(2ga, Myung-Dong)64,Namdaemun-ro,
Jung-Ku, Seoul, Korea



TEL:(02) 752-4280
FAX:(02) 752-7815



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VERIFICATION

I, CHOI YONG HAE, certify under penalty of perjury that I am the CEO/President of ADM Co., Ltd. In that capacity, I am familiar with the matters stated in the foregoing Answer and Defenses to Complaint and the facts stated therein are true and correct to the best of my knowledge, information, and belief.

Executed on February 15, 2023.



CHOI YONG HAE

Sworn to me this __ day of February, 2023

Notary Public

등부 2023년 제 129 호

Registered No. 2023 - 129

인 증

위 확 인 서 에 기재된

최 용 해 는

본 공증인의 면전에서 위 사서증서에
자기가 서명한 것임을 자인하였다.

2023년 02월 15일

이 사무소에서 위 인증한다.

공증인가 경향합동법률사무소
소속 서울중앙지방검찰청

서울 · 중구 남대문로 64 (명동2가)

공증담당변호사

신태기

Notarial Certificate



CHOI, YONG HAE

personally appeared before
me and admitted his(her)
subscription to the attached

VERIFICATION.

This is hereby attested on this
15th day of Feb. 2023
at this office

KYUNG HYANG
LAW NOTARY OFFICE
Belong to the Seoul Central District
Prosecutor's Office

(2ga, Myung-Dong)64,Namdaemun-ro,
Jung-Ku, Seoul, Korea

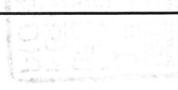
Shin Tae Kyu
Signature of the Notary Public

SHIN TAI KYU

This office has been authorized by
the Minister of Justice, the Republic
of Korea, to act as Notary Public
Since 1st day June, 1979. under
Law No.2254



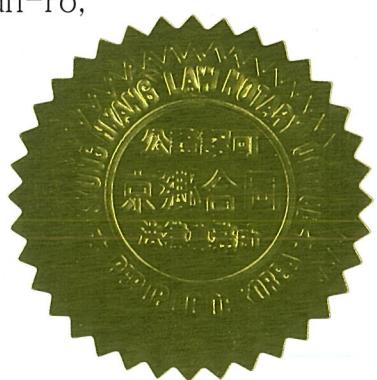
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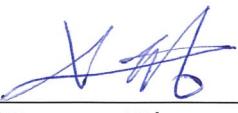
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VERIFICATION

I, Woo Kyoung Kim, certify under penalty of perjury that I am the Chief General Manager of SFA Engineering Corp. In that capacity, I am familiar with the matters stated in the foregoing Answer and Defenses to Complaint and the facts stated therein are true and correct to the best of my knowledge, information, and belief.

Executed on February 15, 2023.



Woo Kyoung Kim

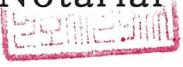
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Notary Public

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공증담당변호사

신태기



KIM, WOO KYOUNG

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me and admitted his(her)
subscription to the attached

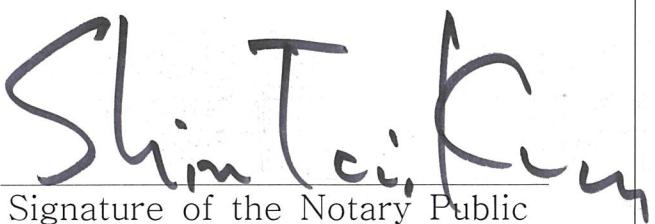
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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2023, the foregoing document was electronically filed with the Clerk of Court by using the CM/ECF system. In addition, a copy of the foregoing was served via U.S. Mail on Counsel for Plaintiffs at the following address:

Philla Kim, Esq.
2550 Pleasant Hill Road, Suite 420
Duluth, Georgia 30096

Counsel for Plaintiffs

/s/ Michael McConnell
Michael McConnell

An Attorney for Defendants